

## Review: David Archard und Colin M. MacLeod (eds.): The Moral and Political Status of Children

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# David Archard and Colin M. Macleod (ed.): The Moral and Political Status of Children

Reviewed by Marisa dos Reis

The questions 'what is a 'child?' or 'what rights do children have?' are far from being consensually answered. In fact, children have been more commonly defined for what they are not than for what they are.

In a 1973 article, *Children Under the Law*, Hillary Clinton (then an attorney) argued for an interesting point of view: children's rights were a "slogan in need of a definition".

Her suggestion was to abolish the legal status of children as minors, and instead ensure that all the procedural rights guaranteed to adults under the American Constitution should be granted to children whenever the state moves against them. For her, describing a 'minor' as 'everyone under 18 or 21' was artificial and did not take into account the differences in competency levels and maturity amongst children of different ages.

In a very creative and surprising move, Clinton argued in favour of creating something like a 'scale' whereby children could 'gradually' see their maturity and competence recognised.

Now, in 2009, 20 years since the Convention on the Rights of the Child was created, the notion of children's rights is yet to be well defined. There is no singularly accepted definition or theory on the rights held by children. Today Somalia and the United States are the only countries who have not ratified the Convention. In fact, in 2002, Somalia's previous transitional government signed the Convention, just as the United States did under Clinton's presidency in 1995, though neither has ratified it. However UNICEF announced last November that the Somali Cabinet of Ministers has agreed to ratify the Convention. This makes the Convention the most widely ratified international human rights treaty, leaving the United States as the only country outside the pact.

In the Introduction of *The Moral and Political Status of Children*, (from 2002), the editors recognise that an apparent trend already exists towards viewing children as distinct individuals and as subjects of moral and political theory. They clarify in the book that the so-called status of children does not really refer to their 'moral or political status'. Better,



it addresses the question of how we should define a child (p. 13).

They argue that defining someone as a child under chronological criteria seems inappropriate. It also seems inaccurate to define a child by referring to their lack of ability when compared to adults when some adults lack those same competencies. Archard and MacLeod argue against the division generally made between 'childhood' and 'adulthood'. More properly, we should distinguish between the terms 'infants', 'young people', 'teenagers' and 'adolescents', instead of using 'childhood' to refer to all groups (p.14).

The anthology is structured in three parts which explore the different dimensions of the main topic: I. *Children and Rights*; II. *Autonomy and Education and*; III. *Children, Families and Justice*.

The first block consists of five articles on the definition of children's rights.

An interesting thesis is one defended by James Griffin in the first article *Do children have Rights?*. He contributes to the extensive debate around legal and human rights. He argues confidently for children having legal rights but questions if they also have *human rights* (pp. 19-21). He starts by comparing children's vulnerable status to zygotes, embryos, foetuses, animals or severe mentally impaired people. Griffin believes human

rights can be defined as a shield for our human standing, our 'personhood'. Personhood can be defined when we analyse the concept of 'agency'. Being an agent means having the ability of assessing and making choices, taking decisions concerning one's own course through life. Furthermore, the author argues that 'personhood' cannot be the only ground for human rights. He is not particularly explicit when explaining which other grounds should be taken into account when we are referring to human rights. But he briefly describes those grounds as 'practicalities' (pp. 23-24).

Referring to the Convention, the author identifies the purpose of this legislation as an instrument to protect vulnerable children. The author concludes that infants have no 'human rights', just like severe mentally impaired people, but that society in general imposes on itself heavier obligations towards them. Nevertheless, many children, though not infants, are capable of agency. For that reason, the author agrees that children may be entitled to rights, given that human rights are claims that individuals can make against others, including their society (p. 28).

Harry Brighouse's point of view, in *What Rights (if any) do Children Have?* does not differ greatly from Griffin's article. He begins by saying that fundamental rights, seen from the liberal perspective, are concerned with autonomous capable individuals and for that reason, we cannot assume that children have them. However, he argues children can be granted legal rights. He believes that children have solely welfare rights instead of agency rights (pp. 31-32). And he goes further: children not only lack fundamental rights but attributing those types of rights to them would risk their best interests (p. 32). Here the author makes an exception. He says that it is acceptable to grant children some agency rights, but only in as far as those rights are different from those of adults and when the age of entitlement is clearly specified. This ought to be made in respect to their welfare rights and their prospective autonomy. Brighouse argues that the Convention jeopardizes children's prospective autonomy, granting some legal agency rights to young children, and at

the same time, giving parents too much effective control over the development of their rational abilities and their access to information (p. 51-52).

In *Children's Choices or Children's Interests: Which do their Rights Protect?* Samantha Brennan intelligently presents the debate between the choice theory of rights and the interest theory of rights (pp. 55-63). Again, there is the suggestion of graduating the conceptions of rights in such a way that one can protect both choices and interests. She stands for a 'compromise' between the two models where, in the beginning, rights for children function to protect their interests and as they grow up and become autonomous choosers, rights function as a protection of their own individual choices. This theory is directly connected to Neil MacCormick's, who argued for a reconciliation of both theories: choices' and interests'. He stands up for a common foundation for both sorts of rights. Brennan finds his theory attractive but disagrees with him when he believes that rights do not only protect interests but choices as well. The author argues that MacCormick does not give us the answer about the foundation of these rights. She argues that these rights base themselves on the protection of choices even if those choices are against the chooser's best interests. For her, children are "would-be choosers" and, such as adults, they do have rights, only from a different kind (pp. 63-67).

Barbara Arneil brings us *Becoming versus Being: A Critical Analysis of the Child in Liberal Theory*. The early liberal theory classifies children as potential right-bearing citizens: on one hand, "half beings with a kernel of rationality" and, on the other hand, "the negation of their future adult form" since there are still seen as irrational creatures. The definition of 'becoming' derives from seeing children as future adults and not as already existing independent human beings. For John Locke, the 'product' of 'becoming' will be the rational citizen or the property owner, capable of understanding rules and accepting authority and the State (pp. 71-74).

Several theories on children's rights have tried to deny this point of view, arguing that children are beings entitled with rights. Against Locke's position, where only the father had something to say, here the state and society must get involved in their lives and take care of them as well. Similarly to Brighouse, Arneil finishes by saying that a possible solution should emphasize *responsibilities* towards children rather than focusing on *rights*, in a way that allows us to better address children's

interests (pp. 75-86).

The article is quite descriptive albeit coherently argued. However, it may not add much to the discussion. The solution pointed out by the author does not seem creative or a true answer to the question. It opens a second door towards ethics but does not close the first towards rights (pp. 89-91). The other three authors in this chapter assumed a more practical and interesting approach, even if, in some cases, like Brighouse's, the article does not have so many references or a well balanced structure. In fact, Brighouse barely stepped away from Onora O'Neill, Robert Godin and Dianne Gibson in his references. Griffin and Brennan have clear and profound articles, carrying true answers and pointing out relevant references on the subject.

The second part of the book tries to relate the progressive autonomy gained by children as they grow up with progressive moral evolution, achieved by education.

Robert Noggle starts his chapter with a very explicit position: children should not be given a completely open future by making their present free of values or religious concepts (pp. 112-115). In *Special Agents: Children's autonomy and Parental Authority* he says that if we do so, we would be preventing children from progressing from what he calls "a special agent" to a full developed, "temporally extended moral agent" with a sense of moral decency. He describes the relation between children and their parents as a fiduciary one where the parents should decide under a kind of Rawlsian "veil of ignorance" how to raise the moral new being (pp. 97-100). He believes children should carry the moral values of their families in the early stages to avoid them from being raised without principles at all. Otherwise, we could expect a "moral psychopath" (p. 111). However, parents cannot force children to keep these values when they grow up.

The idea of applying Rawl's theory to children's education is not new. However, the way the author relates it with the fiduciary special relationship between parents and children is very interesting and seems to explain well the moral relationship between both agents. Noggle does not hide himself behind hypocrisy and assumes that children are not free to choose their moral and religious values. On the other hand, parents do not have permission to *perpetuate* their own beliefs in time nor have they the right to do it in an intolerant, unreasonable way.

The second article, *Autonomy, Child-Rearing, and Good Lives* by Eamonn Callan tries to

explain that autonomy is a *sine qua non* condition to a 'good life' at least, from a liberal point of view (p. 118). However, what 'a good life' is or what 'a good life' seems to be is unclear. Thus, *autonomy* would be an instrument which helps enable agents to make their own choices according to their own conception of good (p. 119-121). Nevertheless, the instrumental theory collapses once we acknowledge that autonomy can be a virtue and not just an instrumental insipid thing. Therefore, the author tries to explain that emphasizing *autonomy* as an instrument, could lead to failure of our judgement about *goodness* (p. 123). Callan argues that, not only have we to gain autonomy, but we also need to recognise the importance of fostering our capacities leading to a conception of good. Autonomy belongs to character rather than being a mere instrument. From Callan's liberal point of view, exposing children to a multicultural environment may not facilitate this task (p. 137-138).

David Archard develops this issue in his article *Children, Multiculturalism, and Education*. He attempts to become clearer about the balance required between individuals' or groups' interests and children's interests to acquire (or not) an identity as an individual. He argues that it is legitimate for a group or family to transmit its own values to children and that the existence of cultural diversity is not, in itself, a bad thing.

However it is wrong to raise children merely as means to the fulfilment of parental or a group's wishes. Children have, as future adults, an interest in how they will be raised. But raising a child as a mere future group member may contribute to prevent her to choose any other paths in her life. So then what does it mean to have a right to an 'open-future'? There is a right for parents to *share* their family life with children to such an extent that children may be raised to share the values of the group. Just like Noggle, Archard believes neither the parents nor groups have the right to *impose* their way of life to the next generation. (pp. 158-159).

Archard claims that children may bear the cost of being exposed to differences between their families' values and the ones existing in society (pp. 150-152).

Joe Coleman's brilliant article *Answering Susan: Liberalism, Civic Education and the Status of Younger Persons* starts with an hypothetical situation where Susan, a 15 years old girl and a 10th grade student, addresses a panel of political theorists that are debating topics such as what does liberalism require in

the way of civic education. Coleman realises that if on one hand, young children lack a capacity to understand a Rawlsian concept of the good, on the other hand, we cannot advocate that an adolescent closer to majority lacks that power as well. Coleman advocates a more democratic, participation-orientated approach where educators and students are seen as equals.

The author points to a very relevant and fallacious aspect of liberal theory about *citizenship* and *age* (pp. 163). Liberals accept a person as a citizen as long as that person achieves 18 years of age (in most countries). The status of childhood cannot be limited by any artificial criteria (p. 170). Joe Coleman's article is, indeed, one of the most well written articles in the whole book and deserves our praise. In fact, Coleman reaches important conclusions, written in a pleasantly amusing albeit serious way.

Hillel Steiner starts the third chapter of the book. This final cluster of essays is dedicated to issues concerning *distributive justice*. In *Silver Spoons and Golden Genes: Talent Differentials and Distributive Justice* he approaches some polemic – and still present – ethical questions. Steiner theorizes about what people should give or get from others. The author says that this question should be answered by taking into account one's talents or abilities (p. 183). This is important when we deal with children's education or the development of children's abilities. The author wants to show how differences in natural endowment can lead to inequalities (p. 184). It is said that children have a right to claim against adults, for they have the obligation of creating the necessary environment for children to develop in. Is it possible for children to claim from their parents a better genetic heritage? Steiner argues that children could claim a right against bad genetic endowment, as long as the changes that could have been made did not change the person's (child's) identity (p. 190).

From a softer point of view, Peter Vallentyne in *Equality and the Duties of Procreators* advocates that the only special duty procreators have towards their children is to ensure that they have good perspectives in life and that they do not violate their rights (p. 195). It is offered that agents have the moral duty of deciding not to have children when there are bad prospects for the offspring's life (p. 199). However, there is no special duty to assure the offspring have the highest standards of life possible.

Colin MacLeod's article *Liberal Equality and*

*the Affective Family* tries to conciliate liberal theory with children's special status. He recognises that liberals did not pay much attention to the role of children or their status. Children should be seen as full, equal and distinct subjects. If liberal ideology allows some inequalities among adults, those inequalities should not be reflected (or completely reflected) on children. (p. 219) Public provisions could help to reduce these inequalities. It is acceptable that some inequalities arise among adults due to individual choices made in an initial position of equality, but it is not that when those differences arise due to other factors such as social or natural contingencies. Another interesting point is that inequalities arise among children because parents care more about their own children than about others'. MacLeod believes that it is possible to limit these 'side-effects of love' by pursuing social policies that constrain parents to express themselves impartially about their own children (pp. 226-228).

It is hard to understand how this would be possible in a liberal society. This may be the only weakness of his thesis. This position could hardly cope with the liberal ideals of choice, freedom and propriety.

*What Children Really Need: Towards a Critical Theory of Family Structure*, by Shelley Burtt, tells us about the family structure in the USA. During the 90's, approximately half the children that were born were raised by single-parent families, thereby increasing poverty rates (p. 231). This phenomenon made most politicians and scholars argue in favour of a return to the traditional family model in order to 'disguise' the moral and economical failure of society (p. 232-234). Burtt thinks it is more important to create new policies that cope with the different family models existing at present. She stands for a "critical theory of family structure" where one evaluates children's needs and also gives some clues on how to achieve those needs in each kind of family model (pp. 241-245).

The book ends with Véronique Muñoz-Dardé's article, addressing some questions MacLeod already approached. In *Family, Choice and Distributive Justice* she says something very pertinent: the simple existence of family is so strong, that it can for itself impair the access of individuals to equal opportunities. This affects not only material distribution. It affects the moral and psychological development of the child and their ability to have a future in equal circumstances.

However a fair society must contain a family in some form. But if we agree with it, we

must be aware that individuals will not have equal opportunities in life. The conclusion is that a theory of justice, even a Rawlsian one, cannot have equal opportunity as a prior principle to family (pp. 267-268).

This book offers a good opportunity to go deeper into such subjects concerning children's rights (especially the debate around children's status, welfare or agency rights).

It is especially pertinent given that the debate about children's rights has grown in the last years.

Should today's adolescents be treated as infants, when it is known that they possess nearly the same capacities and knowledge as an adult? Should we abolish the idea of majority because it is based on artificial and mainly historical criteria? Again, the question of creating a "graduation scale" arises.

After reading the preamble of the Convention on the Rights of the Child, we could say that the Convention was created under the vision that entitles children to welfare rights but without agency rights. It is said that children should be "afforded the necessary protection and assistance, recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding". Moreover, it is said that a child should be fully prepared to live an individual life in society. It goes without saying that in this legislation, the child is not yet seen as a full moral individual, but rather like a human being 'under construction'. This Aristotelian concept of children – as being something similar to 'unfinished human beings' – is still the predominant theory.

However, today we can observe a rising interest in the idea that children should be recognised as capable individuals. A good example of this change in focus is the motion for a resolution presented to the Council of Europe last May which proposed lowering the voting age to 16 in all the countries from the Council.

Despite the fact that it may be a little exhaustive or repetitive concerning liberal theory and John Rawls' works – and sometimes not particularly innovative – we can surely recommend this book as a major, provocative and still up to date reference on the topic.

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